

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT L. DYKES,

Plaintiff,

v.

MICHAEL BROWN, et al.,

Defendants.

CASE No. 2:24-CV-17

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

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This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. In an Order and Judgment issued on March 3, 2025, the Court dismissed the action. Any Notice of Appeal was due to be filed on or before April 2, 2025. On April 27, 2025, this Court received Plaintiff's Notice of Appeal. The Sixth Circuit Court of Appeals docketed the appeal and has remanded the matter to this Court with instructions to determine whether the request for extension of time to appeal (referenced in an accompanying letter) should be granted. (ECF No. 51). The Court referred the matter to the Magistrate Judge for a Report and Recommendation. The Magistrate Judge concludes that the Court should deny Plaintiff's motion to extend the time to file a notice of appeal. (ECF No. 54). Plaintiff objects. (ECF No. 55).

The Court has reviewed Magistrate Judge Vermaat's Report and Recommendation (ECF No. 54) and Plaintiff's Objection to the Report and Recommendation (ECF No. 55). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT,

MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds the Report and Recommendation is factually sound and legally correct.

The Court agrees with the Magistrate Judge that the motion for extension should be denied for the very reasons expressed by the Magistrate Judge. To be sure Plaintiff faces obstacles in the custodial setting, but he also has certain advantages, namely, the prison mailbox rule that is not available to pro se litigants. Here he took advantage of that rule by handing a filing to prison officials on the last day possible for a timely filing. There was just one problem: the filing was incorrectly addressed. In this, Plaintiff has shown neither excusable neglect nor good cause. Plaintiff is a frequent and capable pro se litigant with cases both here and in the Eastern District of Michigan. And at bottom, a Notice of Appeal is simply mailing papers to the right court and there is no particular research needed. The Court concludes that neither good cause nor excusable neglect exist to excuse the delay in Plaintiff's filing of his Notice of Appeal.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 54) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motion to extend time to file an appeal (ECF No. 46) is **DENIED**.

Consistent with the May 22, 2025, Order from the Sixth Circuit Court of Appeals, the Clerk of Court shall return this matter to the Court of Appeals for further proceedings.

Dated: July 18, 2025

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE